

North Smithfield Zoning Board of Review

February 9, 2010, 7:00 p.m.

Kendall Dean School

83 Greene St., Slatersville, RI

The Chair called the meeting to order at 7:11 pm.

1. Roll Call

Present: Vin Marcantonio, Steven Scarpelli, Guy Denizard, Mario DiNunzio, Paul Pasquariello. Absent: Bill Juhr, Stephen Kearns. Also present were Building Official Bob Benoit, Assistant Town Solicitor Bill Savastano, and a stenographer from Allied Court Reporters.

2. Disclosure of no compensation or pension credits received by the board members.

3. Approval of Minutes—December 29, 2009

Mr. Scarpelli made a motion to approve the minutes of December 29, 2009. Mr. Denizard seconded the motion, with all in favor.

4. Approval of the written decision for the application of Rita Turcotte, requesting to construct a single-family dwelling, which will require a dimensional variance for lot area, per section 5.5, subsection 5.5.1 of the Zoning Ordinance. Locus is Rue de St. Jude, Plat 17, Lots 184 &

185 (Zoning RS-40).

Mr. Scarpelli made a motion to approve written decision for the application of Rita Turcotte, denying the applicant's request to construct a single-family dwelling, which would require a dimensional variance for lot area, per section 5.5, subsection 5.5.1 of the Zoning Ordinance. Locus is Rue de St. Jude, Plat 17, Lots 184 & 185 (Zoning RS-40). Mr. Denizard seconded the motion, with all in favor.

5. Reorganization of the Board—Election of officers

Mr. DiNunzio made a motion to elect Mr. Marcantonio as Chair of the Zoning Board of Review. Mr. Scarpelli seconded the motion, with all in favor.

The Chair made a motion to keep the same officers as last year (Steven Scarpelli as Vice Chair and Bill Juhr as Secretary). Mr. Denizard seconded the motion, with all in favor.

6. Application of Charles Desjardins (owner Patrick Regan), requesting a Special Use Permit under the provision of Section 5.4.7 (10) and a modification to condition number one from previous hearing (August 31, 2004). Locus is 1435 Victory Highway, Plat 4, Lot 4, Zoning: Highway Business.

Applicant Charles R. Desjardins was sworn in by the court

stenographer. He is the owner of Rick's Tire and Auto. In 2004, the business was granted a special use permit, granting him the right to sell up to 5 cars at a time. In 2008, Mr. Desjardins got a dealer's license from the state and would now like to amend the previous special use permit to allow him to sell up to 15 cars on his lot. Mr. Scarpelli asked if there are any state or town laws or regulations that state a maximum number of cars that can be sold. There is not a limit set by the state or town. Mr. Scarpelli asked about the condition of the cars to be sold and whether they will be newer used cars or older ones that would not be in as good condition. Mr. Desjardins stated that they are nice cars that are in very good condition.

The Chair asked if there is a site plan available that shows the layout of the 71 parking spaces on the property. Mr. Desjardins did not have one available. Mr. Benoit stated that since it is an existing business, rather than a new one, the site plan depicting parking is not required. The Chair stated that while Mr. Juhr was not able to attend this evening's meeting, he had called the Chair to express concern about some vehicles at the business that were parked on the grass. Mr. Desjardins stated that none of the cars from his business are ever parked on the grass and they will not be. As a stipulation of the existing special use permit, the cars for sale must be parked on asphalt.

Mr. Denizard asked how many parking spaces are designated for Rick's Tire and Auto. He also wanted to know if there a specific

number of parking spaces per business required by law. Mr. Benoit stated that at one time there were 5 businesses using the property and at that time a drawing was submitted showing each business and the available parking. At that time the parking was sufficient. Mr. Desjardins stated that there are presently only 2 businesses using the property. He said there is plenty of parking. The pet store has 3-4 employees, but most of the lot is used by the auto shop.

Mr. Scarpelli asked if there is any restriction on where the cars that are being repaired are parked and if there is any leaking of fluids on the parking lot. Mr. Desjardins stated that all the cars for sale are in good condition and not leaking fluids. These cars are all parked on the asphalt and in an area clearly designated. The cars in for repair may be leaking fluid when they are brought into the lot, but they are taken care of by chemical clean up. Mr. Denizard asked if the parking lot has catch basins with oil separators.

Mr. Denizard stated that he has done research on the application and said that another dealership across the street can sell up to 10 cars. He stated that if they can only sell 10, then Mr. Desjardins' business should also only sell 10. He also said that the maximum should not be exceeded. Mr. Denizard stated that as of yesterday, there were 7 or 8 cars for sale, when there should only be 5. Mr. Denizard also stated that he is concerned with cars parking near the unpaved area and the business's proximity to the reservoir. He stated that Mr. Desjardins should take precautions to be sure that no cars that are leaking fluid

will cause any runoff to the reservoir. Mr. DiNunzio stated that while he shares Mr. Denizard's concerns, they are not germane to the petition before the Board. They should be focusing on the cars to be sold, not those in for repair. The existing conditions at the site are an existing condition, and it is up to the Building Inspector to enforce any problems. Mr. Denizard stated that he would like to look into the permit and be sure that the business is following all rules and regulations and to see if there are any violations. Mr. Desjardins stated that he has been in business there for 14 years and has never had any violations. Mr. Denizard stated that some of the laws have only 4 or less years old. Mr. Scarpelli stated that he agrees with Mr. DiNunzio that the Board should deal with the question before them, which is only concerned with cars for sale. The Board has no jurisdiction over the cars that are in for repair.

Mr. Denizard asked the applicant if the area with cars for sale could be designated by pylons or chains. Mr. Desjardins stated that he did not see any need for it, but that it would be easy to do if that's what the Board required. Mr. Desjardins stated that there is plenty of room available on the lot. Mr. Scarpelli and Mr. DiNunzio agreed with this. Mr. Desjardins stated he never puts any cars on the unpaved area, so if there were any seen, they were not cars from his business. He stated that the asphalt was extended by 18 feet in 2004. He stated that there are rules and regulations to be followed in his state dealer's license and he has had no infractions.

The Chair opened up the meeting for public comment. Mark Pizzarelli was sworn in by the stenographer. He lives directly abutting the property to the rear. He stated that he is concerned with what may happen with the back of the building. His picture window faces the back of the property and he does not want more cars parked there. He also said that the land has been cleared, trees have been cut, and the land is eroding. He is also concerned that additional lighting will infringe on his property. Mr. Desjardins stated that he is not looking to put any cars behind the building, and that while he does have a motion-sensor light in back; he has never received any complaints about it. He also said that some trees fell down, so they needed to be cut. He stated that some employees park behind the building if necessary, but this space would not be used for any cars to be sold. Mr. Pizzarelli stated that the trees did not fall down, they were cut, which has caused erosion to the property and taken away his buffer to the business property.

Mr. Pizzarelli also expressed concern that there is a ramp behind the building and cars drive up and blow their horn until someone opens the back door. He has gotten used to it, but does not want to see any more of this added. Mr. Scarpelli stated that any cars for sale would not be in the back of the building. He stated that people drive in the back for inspections, and if the noise is a problem, maybe the Building Inspector should address this, but it is not in the purview of the Board. Mr. Benoit said that it is an overhead door and there is no violation of the code.

Mr. Pizzarelli also said he is concerned that the number of cars for sale is almost double what's allowed. He stated that he recently counted 9 for sale, when only 5 are allowed. Mr. Scarpelli stated that this is not an enforcement Board, so they could not address this issue at this hearing. Mr. Pasquariello asked if there are a maximum number of cars that can be put on the property, and if so, what is the maximum. Mr. Benoit stated that it is based on both the number of tenants and the use of each property.

Mr. Benoit referred to the Zoning Ordinance (sections 6.15.2.2 and 6.15.2.5) which addresses lighting and buffering (by way of opaque fence or compact evergreens) and stated that the Board could set conditions regarding the screening of the abutting property.

Mr. Pizzarelli asked if there are any plans to expand the parking area or to pave behind the building. Mr. Desjardins said no.

The Chair stated that he would like to see a site plan outlining all available parking and location of the parking spaces. He wants all paved area shown, as well as the area behind the building.

Mr. DiNunzio made a motion to continue the application until March 9, 2010, so that a site plan with the building footprint, paved area, and desired area for car sales shown can be obtained by the applicant. MR. Scarpelli seconded the motion, with all in favor.

Mr. Benoit asked that this information be submitted at least a week before the meeting. He also asked the Chair if he would like the owner of the building to be at the next meeting. The Chair stated that he would like the owner and the applicant both to be present.

7. Request for a reconsideration of the decision given at the Zoning Board's hearing held on December 29, 2009. Applicant: Rita Turcotte, Locus is Rue de St. Jude, Plat 17, Lots 184 & 185.

Mr. DiNunzio asked why the applicant was requesting a reconsideration of the Board's decision. The Chair stated that the applicant had not submitted any further information on the application. Mr. DiNunzio stated that in that case, if nothing has changed since the decision was made on December 29, 2009, the Board has made its decision and there is no reason for reconsideration of the decision. Mr. Scarpelli stated that he agrees with Mr. DiNunzio.

Mr. DiNunzio stated that he feels the proper avenue for an appeal of the decision is to go to Superior Court. Mr. Savastano stated the he agrees that there is nothing for the Board to act upon if no additional information has been submitted to the Board. He stated that he has read through the minutes of the hearing and has read the decision. He said he was not able to attend that meeting because he had to bring his wife to the doctor, but that he thought Town Solicitor Rick

Nadeau was going to attend the meeting.

Mr. Savastano stated that he thought the Board did an excellent job and is confident that the correct decision was reached. He added that there needs to be something concrete to warrant putting it on the agenda again and that it is incumbent on the applicant to present new or additional evidence. At this point, the correct route of appeal is to Superior Court.

Mr. DiNunzio again stated that there is no basis for reconsideration. Mr. Savastano stated that the Board needs to take some action in order to dispose of the agenda item. The Board should continue the agenda item to the next meeting so that Mr. Jühr can be present to vote (since he was a voting member on the application on December 29, 2009).

Mr. DiNunzio made a motion to table the request for reconsideration until the next meeting, March 9, 2010. Mr. Scarpelli seconded the motion, with all in favor.

8. Ordinance Review Committee Update

The Chair informed the Board that the Ordinance Review Committee will be discussion a wind power ordinance. He gave the members a draft of the ordinance, which he asked them to look over and give feedback to the Chair before next Wednesday's meeting (February 17,

2010—Ordinance Review Committee meeting).

Mr. DiNunzio made a motion to adjourn at 7:56 pm. Mr. Scarpelli seconded the motion, with all in favor.